

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002712

APPLICANT REQUESTS:

- remission of debt that resulted from his court-martial conviction
- reduce the debt amount to no more than \$20,000.00
- a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Petition for Correction of Records to Waive or Remit the Debt
- Power of Attorney
- DA Form 4430 (Department of the Army Report of Result of Trial)
- Memorandum – Subject: Attorney Memorandum in Support of Offer, 9 September 2014
- Memorandum – Subject: Offer to Pay \$20,000.00 Contingent on Disapproval of the Remainder of Adjudged Fine and Additional Confinement, 9 September 2014
- Memorandum – Subject: Request for Extension of Time to Submit Post-Trial Matters, 9 September 2014
- Memorandum – Subject: Request for Deferment of Adjudged Reduction in Grade and Automatic Forfeitures, 3 June 2014
- Self-authored letter (Mrs. M_P_)
- Personal Bills and Account information
- Self-authored letter
- Action letter
- Email communication
- Defense Finance and Accounting Service (DFAS) letter, 29 September 2015
- Debt Dispute letters, 28 October 2022
- DA Forms 2166-8 (Noncommissioned Officer Evaluation Report)
- Award Certificates/Orders and associated documents
- Duty Performance Questionnaire and associated documents
- Memorandum – Subject: Request for Discharge in Lieu of Trial by Court-Martial, 13 December 2013

- Memorandum – Subject: Recommendation for Chapter 10 Request, 12 December 2013
- Memorandum – Subject: Recommendation for Chapter 10 Request, 10 December 2013
- Memorandum – Subject: Recommendation for Chapter 10 Request, 10 December 2013
- Request for Discharge in Lieu of Trial by Court-Martial, 2 December 2013
- Memorandum – Subject: Request for Chapter 10, 4 December 2013
- Offer to Plead Guilty
- Character Reference letters
- Notice of Intent to Initiate Administration Wage Garnishment, 20 September 2021
- Department of the Treasury documents
- Department of Justice letters
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 July 2015
- General Court Martial Orders Number 197, 24 June 2015
- DD Form 2717 (Department of Defense Voluntary/Involuntary Appellate Leave Action)
- Memorandum – Subject: Statement of Acknowledgement of Rights to Individual on Application for Excess Leave, 6 October 2014
- Active Duty Service Member on Excess Leave/Appellate Leave Status, 1 January 2014
- Orders Number 205-157, 24 July 2014
- DD Form 2707 (Confinement Order), 28 May 2014

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant represented by legal counsel provides in part that he served with honor and distinction for over 15 years primarily as a member of the 3rd Special Forces Group. Between 1995 – 2013, the applicant deployed multiple times. These deployments caused him to suffer from Post-Traumatic Stress Disorder further resulting in irrational behavior. In 2011, the applicant began selling military equipment for profit. Once his action caught the attention of law enforcement, the applicant fully cooperated with the investigation conducted recovering approximately \$17,000.00 worth of property. The applicant ultimately plead guilty at a General Court-Martial and was given a contingent sentence (pay a fine of \$75,000.00 or serve an additional 18 months of confinement if the fine is not paid).

a. Based on the pre-trial agreement, the Court-Martial Convening Authority was authorized to approve up to 15 months (total) confinement. Accordingly, the sentence was to be six months of confinement outright with an additional 9 months of confinement if he failed to pay the \$75,000.00 fine imposed by the court. The applicant requested relief from a portion of the fine and the associated confinement since he could not afford to pay the entirety of the fine and believed the government had a valid interest in receiving a partial payment in lieu of the added confinement. Because of the enormity of the fine, the applicant had already decided that it was better for him to remain confined for the full 15 months to avoid the overly burdensome financial obligation. His request was disapproved by the Court Martial Convening Authority. Despite not paying the fine, the applicant was released from confinement at the end of his initial term without a hearing to determine his inability to pay the fine. The applicant was later advised that the fine would likely never be processed due to the government's failure to follow the procedures applicable to the contingent portion of his sentence.

b. Over a year later, the applicant was contacted by the Defense Finance and Accounting Services (DFAS) and advised that he had a \$93,451.37 debt including interest and fees. Now the financial repayment obligation is crippling his family and exacerbating his mental health condition. The applicant argues that he was never afforded the opportunity to alleviate himself of the financial burden through the contingent confinement. Counsel contests that the Board should grant relief on the basis that his post-trial process was done in error and unjustly prejudiced him as a result; however, if the Board does not believe the error was prejudicial enough to warrant relief, clemency also supports the granting of relief. The applicant's fine should have been waived outright or reduced back in 2014, but because the proper process was not followed, not only does he owe the fine, fees and interest were added drastically increasing his debt beyond that which was intended by the court. If the Board does not believe full relief is warranted, counsel requests that his debt be reduced to no more than \$20,000.00, which was the amount that he reasonably believed he could pay and recover back in 2013 and 2014. This petition is further provided in its entirety within the supporting documents for the Board member's review.

3. A review of the applicant's available service records reflects the following:

a. On 3 May 1995, the applicant enlisted in the Army National Guard (ARNG) with duty as an 11B (Infantryman). On or about 24 December 1996, the applicant enlisted in the Regular Army.

b. On 20 November 2013, the U.S. Army Human Resources Command issued Orders Number 324-13 announcing the applicant's promotion to the rank/grade of master sergeant (MSG)/E-8, effective 1 December 2013.

c. On 28 May 2014, the applicant's General Court-Martial was adjudged in that he was sentenced to reduction to private (PVT)/E-1, required to pay a fine of \$75,000.00 and to serve an additional confinement of 18 months if the fine was not paid; confinement for 15 months and a Bad Conduct Discharge.

- one specification of on divers occasions between on or about 2 March 2011 and on or about 23 April 2013 , without proper authority, sell military property of the United States, cameras and tripods
- one specification of on divers occasions between on or about 2 March 2011 and on or about 23 April 2013 , without proper authority, sell military property or the United States: pouches, bags, cases, clothing, mounts. sights, headsets; Microphones, antennas, computer software, radio components, headlamps, and removable electronic data storage cards
- one specification of on divers occasions between on or about 2 March 2011 and on or about 23 April 2013, steal military property, to wit : cameras, tripods, and a dual communication push-to-talk device
- one specification of on diverse occasions between on or about 2 March 2011 and on or about 23 April 2013, steal military property, pouches, bags, cases, mounts, sights, headsets, microphones, antennas, computer software, body armor, radio components, headlamps, removable electronic data storage cards, batteries, and ammunition magazines.

d. On 24 July 2014, the U.S. Army Installation Management Command retroactively issued Orders Number 205-157 ordering the applicant to proceed on permanent change of station to the Personnel Control Facility for confinement on or about 3 June 2014.

e. On 6 October 2014, the applicant acknowledged that the court adjudged a punitive discharge on 28 May 2014, taking initial action in his court martial approving his punitive discharge on 29 September 2014. Upon his release from confinement, he would be placed on excess or appellate leave. Further, unless modified during the appellate process, the approved discharge would be self-executing when the applicant was released from confinement and when the appellate process was final.

f. On 24 June 2015, Headquarters, U.S. Army Fires Center of Excellence and Fort Sill issued General Court-Martial Order Number 197 noting that only so much of the sentence as provides for reduction to PVT/E-1, a fine of \$75,000.00, confinement for 6-months and a Bad Conduct Discharge, adjudged on 28 May 2014, as promulgated by General Court-Martial Order Number 3 and later corrected on 6 February 2015, has been finally affirmed. The automatic forfeiture of all pay and allowances was deferred effective 9 June 2014, and that deferment was terminated on 29 September 2014. The automatic forfeiture of all pay and allowances was waived effective 29 September 2014, for a period of 6 months with direction that those funds be paid to the applicant's wife.

That portion of the sentence extending to confinement had been served. The Bad Conduct Discharge would now be executed.

g. On 22 July 2015, the U.S. Army Installation Management Command issued Orders Number 203-1328 reassigning the applicant to the U.S. Army transition point pending separation processing.

h. On 30 July 2015, the applicant was discharged from military service. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 18 (Remarks) reflects continuous honorable service from 20 February 1997 – 27 May 2014; Excess Leave from 24 October 2014 – 30 July 2015 (280 days); item 24 (Character of Service) reflects Bad Conduct; item 28 (Narrative Reason for Separation) reflects Court Martial (Other); item 29 (Dates of Time Lost During this Period) reflects 28 May 2014 – 23 October 2014

4. The applicant provides through counsel the following a:

a. DA Form 4430, reflective of the applicant being sentenced to reduction to PVT, required to pay a \$75,000.00 fine and to serve an additional confinement of 18 months if the fine is not paid; to be confined for 6 months and to be discharged from the service with a Bad Conduct Discharge; adjudged on 28 May 2014. The applicant was charged with violating Article 108 and 121 of the Uniformed Code of Military Justice in that on various occasions between 2 March 2011 – 23 April 2013, without proper authority he stole and sold military property.

b. Memorandum – Subject: Attorney Memorandum in Support of Offer, dated 9 September 2014, reflective of the submitted request of a contingent offer to pay \$20,000.00 in fines noting that the government would recoup much of his financial loss yet the applicant would still be punished. Acceptance of this offer would save the Government the time and expense of potentially litigating the terms of the adjudged fine.

c. Memorandum – Subject: Offer to Pay \$20,000.00 Contingent on Disapproval of the Remainder of Adjudged Fine and Additional Confinement, dated 9 September 2014, reflective of the applicant's submitted offer to pay \$20,000.00 in that the convening authority agrees to disapprove the remaining portion of the adjudged fine, 18-month confinement if the fine is not paid.

d. Memorandum – Subject: Request for Extension of Time to Submit Post-Trial Matters, dated 9 September 2014, reflective of the applicant's request for an additional 14 days to submit post-trial matters to allow the convening authority time to act on the submitted offer.

e. Memorandum – Subject: Request for Deferment of Adjudged Reduction in Grade and Automatic Forfeitures, dated 3 June 2014, reflective of the applicant's submitted

request that the government defer the adjudged reduction in grade and automatic forfeiture based on the needs of his family.

f. Self authored letter (Mrs. M_P_), reflective of the applicant's spouse's support for the deferment of his forfeiture in pay noting the financial obligations (house payment, car insurance and other necessities etc.).

g. Personal Bills and Account information submitted in support of the requested deferment of the applicant's pay forfeiture.

h. Self-authored letter reflective of the applicant's request for clemency in the form of debt remission further permitting him to move on with his life and provide for his family financially. The applicant notes that during his confinement he was resolved in the fact that since he was unable to afford repayment of the fine in its entirety that he would be confined for the additional period. However, upon inquiry, he was advised that the confinement facility only had orders which stipulated confinement for 6 months and that he could not just remain there. Following his release, he again inquired about the fine. He was advised that the fine would probably not be enforced since he was released from incarceration. He was later blindsided by the notification of the debt. This letter is further provided in its entirety within the supporting documents for the Board member's review.

i. Action letter reflective of an order that only so much of the sentence as provides for reduction to PVT/E-1, payment of a fine of \$75,000.00, confinement for 6 months and a Bad Conduct Discharge is approved and except for that part of the sentence extending to a Bad-Conduct Discharge, will be executed. The automatic forfeiture of all pay and allowances were deferred effective 9 June 2014 and the deferments are terminated on this date. The automatic forfeiture of all pay and allowances is waived for 6-months with the direction that these funds be paid to the applicant's spouse.

j. Email communication reflective of communication concerning the applicant's fine, confinement and how it was being handled. The applicant was advised by legal counsel that the assumption is that the fine would not be enforced.

k. DFAS letter dated 29 September 2015, reflective of the applicant being advised of the \$93,451.37 debt and the required monthly payment amount (\$2,636.09).

l. Debt Dispute letters dated 28 October 2022, reflective of the applicant's contention with the debt accrued amount (\$112,182.18). Counsel argues that the current collection action against the applicant is unwarranted and in direct conflict with the sentence adjudged which directed an additional nine (9) months of confinement in the event of nonpayment of the fine. This letter is further provided in its entirety within the supporting documents for the Board member's review.

m. DA Forms 2166-8 reflective of the applicant's professional performance as evaluated by members of his immediate leadership.

n. Award Certificates/Orders and associated documents reflective of the applicant being recognized for his professional performance in the form of recognition (awards) actions to include receipt of multiple Bronze Star Medal's, Joint Service Commendation Medal, Army Commendation Medal's, Army Achievement Medal's, Army Good Conduct Medal's etc.

o. Duty Performance Questionnaire and associated documents reflective of a character reference questionnaire provided to various persons with regard to the applicant's duty performance as a Soldier.

p. Memorandum – Subject: Request for Discharge in Lieu of Trial by Court-Martial, dated 13 December 2013, reflective of the disapproval of the applicant's submitted request to be discharged in lieu of court-martial by the Commanding General, Special Operations Command.

q. Memorandum – Subject: Recommendation for Chapter 10 Request, dated 12 December 2013, reflective of the recommendation for disapproval of the applicant's request for Chapter 10 (Discharge in Lieu of Court Martial) by the Commander, 528th Sustainment Brigade (Special Operations) (Airborne).

r. Memorandum – Subject: Recommendation for Chapter 10 Request, dated 10 December 2013, reflective of the recommendation for disapproval of the applicant's request for Chapter 10 (Discharge in Lieu of Court Martial) by the Commander, 528th Sustainment Brigade (Special Operations) (Airborne).

s. Memorandum – Subject: Recommendation for Chapter 10 Request, dated 10 December 2013, reflective of the recommendation for disapproval of the applicant's request for Chapter 10 (Discharge in Lieu of Court Martial) by the Commander, Headquarters and Headquarters Company, Special Operations Command (Airborne).

t. Request for Discharge in Lieu of Trial by Court-Martial, dated 2 December 2013, reflective of the applicant's submitted request for discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10.

u. Memorandum – Subject: Request for Chapter 10, dated 4 December 2013, reflective of the applicant's military attorney's support of his request to be discharged in lieu of trial by court-martial. He noted that the applicant was willing to help the Government avoid the exhaustive expense and complication associated with the conduct of the investigation, waive his rights to have the Government prove all elements

of the case beyond a reasonable doubt and to make a swift and quiet exit from the military with a bad characterization of his service.

v. Offer to Plead Guilty reflective of the applicant's offer to plead guilty to all charges.

w. Character Reference letters reflective of provided statements on behalf of the applicant in support of his retention on active duty or discharge in lieu of trial by court-martial as noted by various members of both military and civilian service to include family members. The letters are provided in their entirety for the Board members review within the supporting documents.

x. Notice of Intent to Initiate Administration Wage Garnishment dated 20 September 2021, reflective of the applicant being contacted with regard to payment of the \$112,182.18 debt. The applicant was afforded the opportunity to repay the debt in full or enter into a repayment plan.

y. Department of the Treasury documents reflective of varying letters related to the garnishment actions being initiated in response to the applicant's incurred debt.

z. Department of Justice letters reflective of information pertaining to background checks (finger printing) conducted on behalf of the applicant.

5. On 30 April 2024, DFAS provided that the applicant's debt was originally \$93,451.37 plus interest and fees of \$244.66 of which the applicant has paid \$15,457.03 bringing his total balance to \$78,239.00. This amount was sent to the collection agency. The Debt System provides that recoupment action is required for the unearned portion of the applicant's bonus based upon separation code "JJD" (Court Martial)". The applicant contracted to serve until 31 October 2022; at the time of separation, the applicant had 146 unserved days. Further, the applicant's debt is associated with forfeiture of pay not collected or posted to his account prior to separation. This action was in direct result of the court-martial occurring on 28 May 2014 wherein he was fined \$75,000.00.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade

requests. The evidence shows the applicant was convicted by a general court-martial of the theft and sale of government property on diverse occasions. The court sentenced him to various punishments including forfeiture of pay and a \$75,000 fine. While the Board considered the applicant's service and deployments, as well as the character reference letters, the Board found this debt to be a valid debt that resulted from the applicant's own misconduct, and thus the Board did not find it in error or unjust. Therefore, based on a preponderance of available evidence, the Board determined that the debt the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status. Paragraph 1-8 (Indebtedness to the U.S. Army that May Not be Remitted or Cancelled under 10 U.S.C. 4837) provides that Indebtedness to the U.S. Army will not be remitted or canceled when:

- a Soldier's pay is not reduced promptly in connection with forfeiture of pay imposed by court-martial sentence
- when the debt is incurred while not in an active status
- if a Soldier will receive a less than an honorable discharge
- when a Soldier is held liable for damage or loss of property to another branch of service
- when debts are due to loss of public funds obtained or converted to own use through fraud, larceny, embezzlement, or other unlawful means
- when debts are due to fines imposed by court-martial sentence

3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//